



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1310 (Substitute S-2 as reported) *(as passed by the Senate)*
 Senate Bills 1311 and 1312 (as reported without amendment) *(as passed by the Senate)*
 Senate Bill 1313 (Substitute S-1 as reported) *(as passed by the Senate)*
 Senate Bill 1314 (Substitute S-1 as reported) *(as passed by the Senate)*
 Sponsor: Senator Tupac A. Hunter (S.B. 1310)
 Senator Buzz Thomas (S.B. 1311)
 Senator Dennis Olshove (S.B. 1312)
 Senator Irma Clark-Coleman (S.B. 1313)
 Senator Mike Nofs (S.B. 1314)
 Committee: Judiciary

Date Completed: 6-3-10

RATIONALE

The economic downturn of the last several years has created financial hardship for many people, which can lead to difficulty paying for utility services. As a result, energy theft has been on the rise. Following a shut-off, some residents evidently reconnect service using jumper cables or other makeshift means. In other cases, landlords reportedly create the unauthorized connections and advertise free utilities to attract renters. Also, some individuals apparently have gone into business for themselves reconnecting service for others. Unauthorized electric and natural gas connections create serious risks to public safety and have a negative impact on utility companies' profit margins, which can result in higher rates for all customers. To ensure that the appropriate party is held responsible for an unauthorized connection, it has been suggested that a utility should be allowed to deny service at a location with a history of unauthorized use, that a customer should be required to provide property ownership or residence information to have service reconnected, and that an owner should have to notify a utility when surrendering or abandoning property to avoid liability for unauthorized service use. In addition, to deter energy theft, it has been suggested that creating an unauthorized service connection for another person should be designated a felony.

In a related matter, incidents of violent threats and assaults against utility employees reportedly have increased drastically in conjunction with the increase in shut-offs and unauthorized connections. Some people believe that a specific penalty for assaulting and/or battering a utility worker should be established.

CONTENT

Senate Bill 1310 (S-2) would amend Public Act 3 of 1939, the Public Service Commission (PSC) law, to do the following:

- **Require an electric or natural gas utility to implement measures intended to cure an unsafe connection caused by unauthorized service use.**
- **Allow a utility to take action to deter future unauthorized use.**
- **Allow a utility to refuse to provide service at a location where service had been shut off at least twice in the past two years.**
- **Require a utility to reestablish service if the customer could provide property ownership or residence information and paid applicable fees and charges.**

- **Require a property owner to notify a utility of abandonment or surrender of property in order to avoid liability for unauthorized utility use at that location.**
- **Require a utility with at least 1.0 million customers to notify landlords of service shut-offs due to unauthorized use.**

Senate Bill 1311 would amend the Michigan Penal Code to establish felony penalties for selling or transferring a utility product or service knowing it was obtained illegally.

Senate Bill 1312 would amend the Code of Criminal Procedure to include the felony proposed by Senate Bill 1311 in the sentencing guidelines.

Senate Bill 1313 (S-1) would amend the Michigan Penal Code to establish misdemeanor and felony penalties for assaulting or battering an employee or contractor of a public utility.

Senate Bill 1314 (S-1) would amend the Code of Criminal Procedure to include the felonies proposed by Senate Bill 1313 (S-1) in the sentencing guidelines.

Senate Bill 1312 is tie-barred to Senate Bill 1311. Senate Bill 1314 (S-1) is tie-barred to Senate Bill 1313. All of the bills are described below in further detail.

Senate Bill 1310 (S-2)

Under the bill, if a utility observed an unsafe electric or natural gas service connection at a customer's location caused by unauthorized use of service, the utility would have to implement measures consistent with good utility practices intended to cure or otherwise address the unsafe connection, and could take appropriate action to deter future unauthorized use at that location, including installation of additional utility facilities.

("Utility" would mean an electric or natural gas utility regulated by the PSC. "Unauthorized use of electric or natural gas service" would mean theft, fraud, interference, or diversion of service, including meter tampering, bypassing, and service restoration by anyone other than the utility or its representative. "Meter tampering" would mean any act that affects

the proper registration of service through a meter and affects the flow of energy. "Bypassing" would mean unmetered service that flows through a device connected between a service line and customer-owned facilities.)

At any customer location where a utility had shut off service at least two times during the previous 24 months because of unauthorized use, a utility could refuse to provide utility service to that location notwithstanding any other administrative rules or statutes if it determined that denying service at that location would prevent the reoccurrence of the unauthorized use.

A utility would have to reestablish service at a customer location if the person requesting service proved that he or she was the legal property owner by either: 1) providing property ownership information and, before reconnection, paying for the actual cost to repair the utility's equipment and facilities located on his or her property, all fees and deposits required under the utility's approved schedule of rates and tariffs, and all charges due to the utility for the previous unauthorized use that occurred during his or her ownership; or 2) providing a signed lease agreement certified by the landlord that established the identity of the tenant responsible for the previous unauthorized use. If the owner could not provide that documentation and did not agree to pay for charges due to the utility for previous unauthorized use, the utility still could reestablish service if the owner agreed to pay any additional fee for reestablishing service at a location with multiple prior occurrences of unauthorized use as specified in the utility's approved schedule of rates and tariffs.

If the person requesting service could not provide property ownership information, a utility could reestablish service if he or she could provide all of the following:

- Residency information.
- All documentation, fees, and deposits required by R 460.106, R 460.109, R 460.110, and R 460.144 of the Michigan Administrative Code (described below, under **BACKGROUND**).
- Payment of any additional fee for reestablishing utility service at a location with multiple prior occurrences of unauthorized use as specified in the

utility's approved schedule of rates and tariffs.

("Property ownership information" would mean a recorded warranty deed, notarized closing papers, tax records, mortgage payment book, or copy of an insurance policy for the address identifying an individual or entity as the owner.

"Residency information" would mean all of the following:

- Positive identification (i.e., a driver license or State ID card, a military ID card, a passport, or other government-issued photo ID).
- A signed lease certified by the landlord for the location where service was being requested.
- Any first-class mail sent to the person requesting service within the last three months at his or her previous residence.)

A property owner would have to notify a utility within 30 days after he or she abandoned or surrendered property. If a property owner did not do so, he or she would be liable, jointly and severally, for any unauthorized use that occurred at the property after the abandonment or surrender.

Within 150 days of the bill's effective date, a utility would have to establish and maintain a service in which landlords of rental property in the utility's service territory who registered with the utility for shut-off notifications were notified of locations where electric and natural gas utility services had been shut off because of unauthorized use. This requirement would not apply to utilities serving fewer than 1.0 million customers.

The bill's provisions would apply only to the unauthorized use of electric or natural gas service and would not apply to the provision of a telecommunication service or cable service or the attachment of facilities by a telecommunication or cable service provider to the utility poles, ducts, conduits, or trenches owned or controlled by an electric or natural gas utility. The bill would not supersede, modify, or affect the validity of any statutes, administrative rules, utility tariffs, contracts, PSC orders, or common law governing the rates, terms, and conditions of the use of electric or natural

gas utility poles, ducts, conduits, and trenches.

Senate Bill 1311

Under the bill, it would be a felony for a person to sell or transfer, or attempt to sell or transfer, the product or service of an electric provider or natural gas provider to any other person, knowing or having reason to know that the product or service was obtained illegally. The offense would be punishable by imprisonment for up to five years, a maximum fine of \$5,000, or both. If a person had been previously convicted of this offense, however, the penalty would be imprisonment for up to five years, a maximum fine of \$10,000, or both.

"Electric provider" would mean that term as defined in the Clean, Renewable, and Efficient Energy Act. (That Act defines the term as one of the following:

- Any person or entity that is regulated by the PSC for the purpose of selling electricity to retail customers in the State.
- A municipally owned electric utility in the State.
- A cooperative electric utility in the State.
- An alternative electric supplier licensed under Public Act 3 of 1939.

"Natural gas provider" would mean that term as defined in the Clean, Renewable, and Efficient Energy Act (i.e., an investor-owned business engaged in the sale and distribution of natural gas within the State whose rates are regulated by the PSC).

Senate Bill 1312

Under the bill, a violation of Section 282a of the Penal Code (proposed by Senate Bill 1311), would be a Class E felony against property with a statutory maximum of five years.

Senate Bill 1313 (S-1)

The bill would establish penalties for a person who assaulted, battered, or assaulted and battered an individual while he or she was performing his or her duties as an employee or contractor of a public utility, or because of the individual's status as an employee or contractor of a public utility.

("Public utility" would mean a utility that provides steam, gas, heat, electricity, water, cable television, telecommunications services, or pipeline services, whether privately, municipally, or cooperatively owned.)

Except as described below, the offense would be a misdemeanor punishable by imprisonment for up to one year, a maximum fine of \$1,000, or both.

If the offense caused the individual bodily injury requiring medical attention or medical care, it would be a felony punishable by imprisonment for up to two years, a maximum fine of \$1,000, or both.

If the offense caused the individual serious impairment of a body function, it would be a felony punishable by imprisonment for up to five years, a fine of not less than \$1,000 or more than \$5,000, or both. ("Serious impairment of a body function" would mean that term as defined in Section 58g of the Michigan Vehicle Code.)

The bill would not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same transaction.

Senate Bill 1314 (S-1)

Under the bill, assault on a utility worker causing bodily injury requiring medical attention would be a Class G felony against a person with a statutory maximum of two years.

Assault on a utility worker causing serious impairment of a body function would be a Class E felony against a person with a statutory maximum of five years.

MCL 460.9d (S.B. 1310)
Proposed MCL 750.282a (S.B. 1311)
MCL 777.16o (S.B. 1312)
Proposed MCL 750.81e (S.B. 1313)
MCL 777.16d (S.B. 1314)

BACKGROUND

R 460.106

This rule specifies the methods by which applicants may request service from a utility and requires an applicant to do the following:

- Provide positive identification (i.e., a consistently used appropriate identification such as a driver license or State ID card, U.S. military card or military dependent's ID card, Native American tribal document, or passport).
- Pay a deposit, if required by R 460.109 or R 460.110.

The utility also may require payment of a delinquent account as a condition of providing or continuing service if the following conditions apply:

- The delinquent account is in the customer's or applicant's name.
- The delinquent account is not in dispute, owed to the utility, and accrued within the last six years.

R 460.109

Under this rule, a utility may require a deposit as a condition of providing service to a new customer if any of the following apply:

- At the time of the request for service, the applicant has a delinquent bill with any electric or gas provider that accrued within the last six years and that remains unpaid and is not in dispute.
- The applicant misrepresents his or her identity or credit standing.
- The applicant fails to provide positive identification information upon request when applying for new service.
- The applicant requests service for a location at which he or she does not reside.
- The applicant engaged in unauthorized use of utility service within the last six years.
- The applicant has sought relief under Federal bankruptcy laws within the last six years.

A utility also may require a deposit if, within the past three years, the applicant lived in a residence with a person who accrued a delinquent account for electric or gas service to the shared residence, during the time the applicant lived there, that remains unpaid and is not in dispute, and the person with the delinquent account now resides with the applicant.

Notwithstanding any of these provisions, a utility may not require a deposit as a

condition of providing service to a new customer if any of the following apply:

- The Department of Human Services is responsible for making utility payments on behalf of the applicant.
- The applicant secures a guarantor who is a customer in good standing with the utility.
- The applicant is at least 65 years old and has a satisfactory payment history for the past three years with any gas or electric provider.

R 460.110

This rule allows a utility to require a deposit as a condition of providing or restoring service to a previous customer or continuing service to a current customer if any of the following apply:

- At the time of the request for service, the customer or applicant has a prior service account that is delinquent, that accrued within the last six years, and that remains unpaid and is not in dispute, or litigation was required to obtain full payment of an account that was not in dispute.
- The customer or applicant misrepresents his or her identity or credit standing.
- The customer or applicant fails to provide positive identification information upon request at the time of application for service.
- The customer or applicant engaged in unauthorized use of utility service within the last six years.
- The utility has shut off service to the customer for nonpayment of a delinquent account that is not in dispute.
- The utility has had at least one check issued from the customer's account returned from a financial institution for insufficient funds or no account, or has had at least one payment from the customer's debit or credit card or other form of payment denied within the last 12 months, excluding financial institution error.
- The applicant has sought relief under Federal bankruptcy laws within the last six years.

A utility also may require a deposit to restore or continue service if, within the last three years, the applicant lived in a residence with a person who accrued a delinquent account for electric or gas service

to the shared residence, during the time the applicant lived there, that remains unpaid and is not in dispute, and the person with the delinquent account now resides with the applicant.

The same conditions that prohibit a utility from requiring a deposit under R 460.109 also apply under this rule.

R 460.144

This rule requires a utility, after it has shut off service, to restore service promptly upon the customer's request when the cause has been cured or credit arrangements satisfactory to the utility have been made.

When a utility is required to restore service at the customer's meter manually, the utility must make every effort to restore service on the day the customer requests it. Except for reasons beyond its control, the utility must restore service by the first working day after the customer's request. For utilities using meter technology with remote shut-off and restoration capability, service must be restored on the day the customer requests it, except in the case of documented equipment failure.

The utility may assess the customer a charge, including reasonable costs, for restoring service and relocating the customer's meter as specified in the utility's approved schedule of rates and tariffs.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Under Senate Bill 1310 (S-2), a utility could hold a landlord responsible for previous unauthorized use unless the landlord could identify the tenant who was responsible, and the utility would have to reconnect service if certain documentation were provided and applicable fees and charges were paid. The bill would establish procedures for service reconnection by landlords whose tenants created illegal connections without their knowledge and vice versa, and for new owners who purchased homes with a history of unauthorized use by the previous owners. These procedures, combined with the requirement that property owners notify

utility companies of any property abandonment or surrender, would help ensure that people who were not to blame for unauthorized connections were not held responsible for them. The bill's requirement that utility companies with 1.0 million or more customers establish a system for notifying registered landlords of unauthorized service use on their property would further protect landowners from accountability for tenants' misconduct.

By reducing the incidence of illegal connections and unauthorized utility use, the bill would protect residents and others from the risk of fire and explosions caused by unsafe connections, and would protect rate-payers from excessive charges resulting from energy theft.

Supporting Argument

While unauthorized utility connections already may be prosecuted under existing provisions regarding theft, the current law is inadequate for several reasons. First, energy theft is unique in the safety hazards it creates, such as the risk of electrocution, explosion, and fire. Unauthorized connections do not threaten only the people who create them; innocent family members, neighbors, and passersby also are at risk of injury and death. Due to its serious consequences, utility theft warrants a harsher penalty than other types of theft. Second, existing penalties for larceny do not distinguish between an individual who creates an unauthorized connection at his or her own residence and an individual who turns unauthorized connection into a business. Reportedly, many energy theft cases involve people who earn a living bypassing legitimate channels in exchange for compensation. Furthermore, the frequency with which this crime is committed demonstrates that the existing penalties are ineffective. A more severe penalty for those who sell illegal connection services, as proposed by Senate Bills 1311 and 1312, would acknowledge the elevated nature of this crime and perhaps serve as a stronger deterrent.

Supporting Argument

When utility companies discover unauthorized electric and natural gas connections, they take action to remedy the situation and eliminate the associated safety hazard. In the course of this work, utility workers have been threatened, punched, and shot at. The exceptional risk these

employees face should be acknowledged in Michigan law with a specific penalty for assaulting and battering them, similar to the existing penalty for assaulting an employee of the Department of Human Services (MCL 750.81c). The penalties proposed by Senate Bills 1313 (S-1) and 1314 (S-1) would help protect employees doing the dangerous work of removing illegal utility connections.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 1310 (S-2)

The bill would have no fiscal impact on State or local government.

Senate Bills 1311 and 1312

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class E offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months, with a statutory maximum sentence of five years. An offender convicted of this offense also would be subject to a fine of up to \$5,000, or \$10,000 for a repeat offense. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

Senate Bills 1313 (S-1) and 1314 (S-1)

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the various proposed offenses. An offender convicted of the misdemeanor offense under the bills would be subject to imprisonment for up to one year and a fine of up to \$1,000. An offender convicted of the Class E offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months, with a statutory maximum sentence of five years. An offender convicted of this offense also would be subject to a fine of up to \$5,000. An offender convicted of the Class G offense

under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months, with a statutory maximum sentence of two years. An offender convicted of this offense also would be subject to a fine of up to \$1,000. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Matthew Grabowski
Elizabeth Pratt
Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.